S.B.CIVIL WRIT PETITION NO.5364/1993

Himmat Lal
v.
State of Rajasthan & Ors.

Date of Order :: 12th January, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. R.C.Gaur, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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The Estate Officer, Public Works Department, Udaipur Circle, Udaipur by order dated 23.6.1992 declared the petitioner an authorised occupant on a government urban land and, therefore, ordered for his vacation from the premises concerned.

Being aggrieved by the same the petitioner preferred a appeal under Section 9 of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964 (hereinafter referred to as “the Act of 1964”) before the court of learned District Judge, Udaipur. Learned District Judge by judgment dated 21.5.1993 accepted the appeal and set aside the order dated 23.6.1992 with a direction to the Estate Officer, Public Works Department, Udaipur to decide the matter afresh by providing adequate opportunity to defend and hearing to the petitioner.

After disposal of appeal the petitioner preferred an application before Estate Officer to restore possession of the premises in dispute to him

as it was prior to the order dated 23.6.1992. The Estate Officer rejected the application preferred by the petitioner on the count that the premises was vacated by him at his own and not in pursuant to the order dated 23.6.1992. The Estate Officer also held that no proceedings as required under Section 5 of the Act of 1964 were taken in pursuant to the order dated 23.6.1992. The Estate Officer also discharged the notice issued to the petitioner under Section 4 of the Act of 1964 as the Public Works Department conveyed that the petitioner has already vacated the premises.

The petitioner at the same time also filed an application to review the judgment dated 21.5.1993 and to give a direction to Public Works Department to hand over possession of the premises in question to him. Learned District Judge, Udaipur by order dated 21.9.1993 rejected the application for review.

By this petition for writ a challenge is given by the petitioner to the order passed by the Estate Officer refusing to restore possession of the premises, discharging the notice issued under Section 4 of the Act of 1964 and also the order dated 21.9.1993 passed by learned District Judge, Udaipur rejecting the review application. The petitioner has also prayed for a direction to restore possession of the land in question with him.

The contention of counsel for the petitioner is that the possession of the premises was handed over by the petitioner to Public Works Department in compliance of the order dated 23.6.1992 passed by the Estate Officer which was set aside by learned District Judge, Udaipur, therefore, possession of the premises in question is required to be restored with the petitioner. It is also urged that the possession of the premises is deemed to be treated with the petitioner after setting aside of the order dated 23.6.1992, as such there was no occasion for the Estate Officer to discharge the notice under Section 4 of the Act of 1964.

A reply to the writ petition has been filed on behalf of the respondents. The respondents while giving details as to how the petitioner is unauthorised occupant also stated that the petitioner handed over possession of the premises in question at his own and not in pursuant to the order dated 23.6.1992. The Public Works Department acquired possession of premises in dispute from the petitioner at his own will, therefore, no proceedings under the Act of 1964 could have been continued, as such the Estate Officer rightly discharged the notice issued to the petitioner under Section 4 of the Act of 1964. It is also asserted that after the order dated 23.6.1992 no proceedings under Section 5(2) of the Act of 1964 were taken and the petitioner at his own handed over

possession of the premises in dispute by vacating it, therefore, there was no need to proceed under the Act of 1964.

Heard counsel for the parties.

The Estate Officer by order dated 23.6.1992 held the petitioner in unauthorised occupation of a public premises and, therefore, ordered for his eviction from the premises in question. It is true that validity of aforesaid order was under challenge before the learned District Judge, Udaipur, however, the petitioner during pendency of appeal at his own vacated the premises and handed over possession of the same to Public Works Department, therefore, the proceedings under the Act of 1964 became infructuous. The contention of counsel for the petitioner that he vacated the premises in compliance of the order dated 23.6.1992 is absolutely ill-founded as no material is placed on record on basis of which it can be said that the premises was vacated in pursuance of the order referred above. The Public Works Department in its reply to the writ petition in quite unambiguous terms stated that the petitioner vacated the premises at his own and handed over possession of the same to the department. The same was the stand of the department before Estate Officer. Once the petitioner vacated the premises and handed over possession of it to the Public Works Department, no cause remain in existence

to continue proceedings under the Act of 1964. The Estate Officer, therefore, rightly discharged the notice issued under Section 4 of the Act of 1964. The orders impugned, therefore, do not suffer from any error warranting interference of this Court under Articles 226 and 227 of the Constitution of India.

The writ petition, therefore, is dismissed with no order as to costs.

( GOVIND MATHUR ),J.

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kkm/ps.